

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

FLORENTINO RIVERA, et al.,

Plaintiffs,

v.

CENTRO MÉDICO DEL TURABO, INC.
d/b/a HIMA SAN PABLO CAGUAS,
et al.,

Defendants.

Civil No. 07-1137 (JAF)

OPINION AND ORDER

Plaintiffs Florentino Rivera ("Rivera"), his wife, Carmen de León Rivera ("de León"), and their conjugal partnership bring the present diversity action against Defendants Centro Médico del Turabo, Inc. d/b/a HIMA San Pablo Caguas ("HIMA"), Dr. Marcial Walker ("Dr. Walker"), Dr. Lydia Díaz Borrás ("Dr. Díaz"), and others, alleging medical malpractice and emotional distress arising therefrom in violation of, inter alia, 31 L.P.R.A. §§ 5141, 5142 (2007). Docket Document No. 1. Defendant HIMA moves to dismiss the claims without prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6), asserting that we should enforce the forum-selection clause, which requires Plaintiff Rivera to file his claims in Commonwealth court.¹ Docket Document No. 17 (citing FED. R. CIV.

¹ In this circuit, Rule 12(b)(6) is the proper vehicle by which to raise a forum-selection clause defense. Silva v. Encyclopedia Britannica, Inc., 239 F.3d 385, 387 n.3 (1st Cir. 2001).

Civil No. 07-1137 (JAF)

-2-

1 P. 12(b)(6)(2007)). For the reasons stated below, we grant HIMA's
2 motion.

3 I.

4 **Factual and Procedural Synopsis**

5 We derive the following factual summary from Plaintiffs'
6 Complaint. Docket Document No. 1. As we must, we assume all of
7 their allegations are true and we make all reasonable inferences in
8 their favor. Alternative Energy, Inc. v. St. Paul Fire and Marine
9 Ins., Co., 267 F.3d 30, 36 (1st Cir. 2001). In addition, we
10 consider two documents submitted by HIMA that contain the forum-
11 selection clause at issue in this case. Id. at 33 (stating that a
12 court may consider documents outside of the complaint if their
13 authenticity is not disputed by the parties).

14 On November 9, 2005, Dr. Walker performed a prostate biopsy on
15 Rivera, a 65-year-old man with a history of asthma, hypertension,
16 and elevated cholesterol. Because the results of the biopsy
17 revealed that Rivera had prostate cancer, Dr. Walker recommended
18 that Rivera have his prostate surgically removed. Dr. Díaz provided
19 Rivera with medical clearance for the surgery, declaring him to be
20 sufficiently clinically stable to undergo the procedure. The
21 surgery took place on February 21, 2007, at HIMA, a hospital located
22 in Caguas, Puerto Rico.

Civil No. 07-1137 (JAF)

-3-

1 Before Rivera was admitted for surgery, he signed two medical
2 consent forms authorizing HIMA's doctors to perform the surgery and
3 administer anesthesia to him during the procedure. Docket Document
4 No. 17. Each of the consent forms contained a forum-selection
5 clause stating: "In the event that by act or omission I consider
6 that physical, emotional or economic damages have been caused to me,
7 I expressly agree to submit to the Jurisdiction of the Court of
8 First Instance of the Commonwealth of Puerto Rico, for any possible
9 claim." Id. The clause appeared in bold font and had a space below
10 it for the patient's initials. Id. Rivera signed both consent
11 forms and initialed the forum-selection clause contained in each
12 form. Id.

13 Rivera lost a significant amount of blood during the surgery,
14 requiring him to receive blood transfusions. He also suffered from
15 numerous complications after the surgery.

16 Plaintiffs filed their complaint on February 16, 2007. Docket
17 Document No. 1. Among the claims in the complaint are Rivera's
18 malpractice claim and de León's related emotional distress claim
19 against HIMA, alleging that HIMA was negligent in hiring the doctors
20 that treated Rivera, and in failing to maintain adequate quality
21 control measures. Id. HIMA moved to dismiss Plaintiffs' complaint
22 on April 26, 2007, asserting that we should enforce the forum-
23 selection clause, which requires Plaintiff Rivera to file his claims
24 in Commonwealth court. Docket Document No. 17. Plaintiffs opposed

Civil No. 07-1137 (JAF)

-4-

1 on May 18, 2007. Docket Document No. 25. HIMA filed its reply on
2 June 14, 2007, Docket Document No. 33, and HIMA sur-replied on
3 June 26, 2007. Docket Document No. 38.

4 There are also several other motions pending before the court
5 that were filed by Plaintiffs, including a motion to set aside the
6 scheduling order, Docket Document No. 29; a motion for leave to file
7 their First Amended Complaint, Docket Document No. 31; a motion for
8 an extension of time to further amend the complaint, Docket Document
9 No. 32; and a motion for leave to file a Second Amended Complaint,
10 Docket Document No. 39.

11 II.

12 Motion To Dismiss Standard under Rule 12(b)(6)

13 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
14 defendant may move to dismiss an action against him based solely on
15 the pleadings for the plaintiff's "failure to state a claim upon
16 which relief can be granted." FED. R. CIV. P. 12(b)(6). In
17 assessing a motion to dismiss, "we accept as true the factual
18 averments of the complaint and draw all reasonable inferences
19 therefrom in the plaintiffs' favor." Educadores Puertorriqueños en
20 Acción v. Hernández, 367 F.3d 61, 62 (1st Cir. 2004). We then
21 determine whether the plaintiff has stated a claim under which
22 relief can be granted.

Civil No. 07-1137 (JAF)

-5-

1 We note that a plaintiff must only satisfy the simple pleading
2 requirements of Federal Rule of Civil Procedure 8(a) in order to
3 survive a motion to dismiss. Swierkiewicz v. Sorema N.A., 534 U.S.
4 506 (2002); Morales-Villalobos v. Garcia-Llorens, 316 F.3d 51, 52-
5 53 (1st Cir. 2003); DM Research, Inc. v. Coll. of Am. Pathologists,
6 170 F.3d 53, 55-56 (1st Cir. 1999). A plaintiff need only set forth
7 "a short and plain statement of the claim showing that the pleader
8 is entitled to relief," FED. R. CIV. P. 8(a)(2), and need only give
9 the respondent fair notice of the nature of the claim and
10 petitioner's basis for it. Swierkiewicz, 534 U.S. at 512-515.
11 "Given the Federal Rules' simplified standard for pleading, '[a]
12 court may dismiss a complaint only if it is clear that no relief
13 could be granted under any set of facts that could be proved
14 consistent with the allegations.'" Id. at 514 (quoting Hishon v.
15 King & Spalding, 467 U.S. 69, 73 (1984)).

16 III.

17 Analysis

18 HIMA moves to dismiss Plaintiffs' claims without prejudice,
19 asserting that they are bound by a forum-selection clause contained
20 in two documents signed by Rivera. Docket Document No. 17. The
21 clause states that all claims arising out Rivera's treatment at HIMA
22 must be litigated in the Commonwealth Court of First Instance. Id.

Civil No. 07-1137 (JAF)

-6-

1 We apply federal common law to determine whether the forum-
2 selection clause in this case is enforceable. Silva v. Encyclopedia
3 Britannica, Inc., 239 F.3d 385, 386 n.1 (1st Cir. 2001) (applying
4 federal common law after noting that "there is no conflict between
5 federal common law and Puerto Rico law regarding the enforceability
6 of forum-selection clauses"). Under federal law, a forum-selection
7 clause containing mandatory language is presumptively valid.
8 Intercall Telecomm., Inc. v. Instant Impact, Inc., 376 F. Supp. 2d
9 155, 158 (D.P.R. 2005). A mandatory clause "requires that the
10 litigation be brought only in the chosen forum, to the exclusion of
11 others." Id. On the other hand, a permissive clause "allows the
12 parties to litigate in the chosen forum, but does not purport to
13 exclude them from litigating in some other forum that otherwise had
14 jurisdiction." Id. Here, the clause is mandatory; it states that
15 the patient "expressly agrees" that "any possible claim" for
16 damages, whether caused by act or omission, will be litigated in the
17 Commonwealth Court of First Instance. See M/S Bremen v. Zapata Off-
18 Shore Co., 407 U.S. 1, 20 (1972) (finding that a clause stating that
19 "any dispute arising must be treated before the London Court of
20 Justice" was mandatory).

21 A mandatory clause will be enforced unless: (1) "it was not
22 freely negotiated or was the result of overweening bargaining power
23 or fraud"; (2) "it contravenes a strong public policy of the forum
24 where the suit is brought"; or (3) "the party challenging its

Civil No. 07-1137 (JAF)

-7-

1 enforceability shows that trial in [the] contractual forum will be
2 so gravely difficult and inconvenient that it will, for all
3 practical purposes, be deprived of its day in court." Gonzalez v.
4 Avatar Realty, Inc., 177 F. Supp. 2d 101, 103-04 (D.P.R. 2001)
5 (internal quotations omitted). The party objecting to the validity
6 of the clause bears the burden of proving that it should not be
7 enforced. M/S Bremen, 407 U.S. at 10.

8 Plaintiffs' primary argument is that the forum-selection clause
9 was obtained by overreaching. Docket Document No. 25. Rivera
10 contends that HIMA's employees did not discuss the clause with him
11 and no one told him that he could consult an attorney before signing
12 the medical forms. Id. In addition, he had just been diagnosed
13 with cancer and was told that he had to undergo a life-saving
14 surgical procedure. Id. Due to these circumstances, Rivera alleges
15 that he was unable to fully consider or appreciate the ramifications
16 of the forum-selection clause when he signed the medical forms. Id.

17 Although Rivera was presumably upset or stressed when he signed
18 the medical forms, these arguments are insufficient to prove
19 overreaching. The forum clause at issue is what is known as a
20 "boilerplate" provision, which is standardized language that a
21 proposing party inserts into a variety of documents and generally
22 views as relatively nonnegotiable. See BLACK'S LEGAL DICTIONARY 167
23 (7th ed. 1999). HIMA was not required to discuss the forum-

Civil No. 07-1137 (JAF)

-8-

1 selection clause with Rivera because boilerplate provisions do not
2 have to be bargained for or discussed to be valid and enforceable.
3 See Lambert v. Kysar, 983 F.2d 1110, 1119-20 (1st Cir. 1993) ("It
4 is not the law that one must bargain for each and every written term
5 of a contract; simply because the [forum-selection clause] was part
6 of what is called the 'boilerplate' section of the contract does not
7 in itself make it unfair."); see also Silva, 239 F.3d at 389
8 (affirming the enforceability of a forum-selection clause that was
9 a boilerplate provision written in small print on the reverse side
10 of the contract).

11 A forum-selection clause contained in a form contract will be
12 upheld, as long as there was sufficient notice of the clause in the
13 contract and it was not fundamentally unfair. See Carnival Cruise
14 Lines, Inc. v. Shute, 499 U.S. 585, 595 (1991). Rivera was given
15 sufficient notice of the terms of the forum provision. It was
16 written in clear, unambiguous language, and in bold font. See
17 Docket Document No. 17. Rivera signed both consent forms and
18 initialed the forum-selection clause contained in each form. Id.
19 Moreover, we find that the clause was fair because Rivera could have
20 sought treatment elsewhere, but chose to have his surgery at HIMA,
21 and it was foreseeable that all claims filed against HIMA would be
22 litigated in Puerto Rico, where the hospital is located. See Shute,
23 499 U.S. at 595 (finding that the forum-selection clause was fair

Civil No. 07-1137 (JAF)

-9-

1 because, inter alia, plaintiffs could have rejected the contract and
2 the forum selected was the location of defendant's principal place
3 of business).

4 Plaintiffs' final argument, asserting that the clause violates
5 their constitutional right to litigate their claims in a federal
6 court before a jury, is similarly unavailing. Docket Document
7 No. 25. The Seventh Amendment, which grants litigants the right to
8 a jury trial in civil cases, is limited in scope in that it only
9 applies to federal cases. See U.S. CONST. amend. VII. See
10 Minneapolis & S.L.R. Co. v. Bombolis, 241 U.S. 211, 217 (1916); cf.
11 Heghmann v. Fermanian, No. 99-336, 200 U.S. Dist. LEXIS 8562, at *11
12 (D. Me. June 16, 2000) (finding that Maine law denying plaintiffs
13 opportunity to resolve small claims by jury trial was not
14 unconstitutional because the Seventh Amendment does not apply to
15 states). Not surprisingly, courts have enforced forum-selection
16 clauses requiring plaintiffs to file their claims in state court
17 without discussing whether jury trials are available in such fora.
18 See, e.g., Red Mountain Retail Group, Inc. v. BCB, L.L.C., No. 05-
19 2557, 2006 U.S. Dist. LEXIS 24923, at *5-6 (D. Kan. Apr. 27,
20 2006) (enforcing forum-selection clause requiring resolution of
21 claims in state court without discussing the availability of jury
22 trials in that forum); Key Motorsports, Inc v. Speedvision Network,
23 L.L.C., 40 F. Supp. 2d 344, 345, 349 (M.D.N.C. 1999) (same). Courts

Civil No. 07-1137 (JAF)

-10-

1 have also often enforced forum-selection clauses that require
2 parties to submit their claims to foreign courts, where jury trials
3 are rarely available. See, e.g., Fireman's Fund Ins. Co. v. Cho
4 Yang Shipping Co., 131 F.3d 1336, 1340 (9th Cir. 1997) (finding
5 foreign forum-selection clause limiting resolution of claims to
6 Korean courts to be enforceable); see also Holland Am. Line, Inc.
7 v. Wartsila N. Am., Inc., 485 F.3d 450, 457 n.4 (9th Cir.
8 2007) (noting that plaintiffs' argument that enforcement of the
9 foreign forum-selection clause would violate their Seventh Amendment
10 fails because it "would render contrary to public policy almost any
11 forum-selection clause providing for resolution in a foreign
12 country, as very few countries provide for jury trials in civil
13 cases"). As such, we find that the forum-selection clause at issue
14 does not violate Plaintiffs' Seventh Amendment rights and,
15 therefore, conclude that the clause is enforceable.

16 The only remaining question is whether the forum-selection
17 clause applies to Plaintiff de León's claim against HIMA, which
18 seeks recovery for the emotional distress that she has experienced
19 as a result of having to witness her husband suffer from surgery-
20 related complications. Docket Document No. 1. Plaintiffs contend
21 that the clause is not binding on de León because she did not sign
22 the medical consent forms. Docket Document No. 25. This argument is
23 unpersuasive. de León's claim involves the same operative facts as

Civil No. 07-1137 (JAF)

-11-

1 Rivera's claim and should, therefore, be dismissed and refiled
2 together with Rivera's claims in the Commonwealth Court of the First
3 Instance. Cf. Lambert v. Kysar, 983 F.2d 1110, 1121-22 (1st Cir.
4 1993) ("[C]ontract-related tort claims involving the same operative
5 facts as a parallel claim for breach of contract should be heard in
6 the forum selected by the contracting parties.").

7 **IV.**

8 **Conclusion**

9 For the foregoing reasons, we **GRANT** Defendant HIMA's motion to
10 dismiss, Docket Document No. 17. Plaintiffs' claims against HIMA,
11 Docket Document No. 1, shall be dismissed without prejudice.
12 Accordingly, HIMA's motion to set aside the scheduling order, Docket
13 Document No. 29, is **MOOT**.

14 In addition, and because state courts will have to address
15 future issues, we **abstain** from deciding Plaintiffs' request for an
16 extension of time to amend their pleadings, Docket Document No. 32,
17 and their motion for leave to file their Second Amended Complaint,
18 Docket Document No. 39. We also find that Plaintiffs' previous
19 motion for leave to file their First Amended Complaint is **MOOT**,
20 Docket Document No. 31.

21 Finally, we note that HIMA's arguments regarding the
22 enforceability of the forum-selection clause at issue may equally
23 apply to all remaining defendants, including recently-added

Civil No. 07-1137 (JAF)

-12-

1 defendants listed in the Second Amended Complaint. Thus, Plaintiffs
2 have **until August 27, 2007** to show cause why their claims against
3 remaining defendants should not be dismissed as well. Defendants
4 will have **until September 11, 2007** to respond.

5 **IT IS SO ORDERED.**

6 San Juan, Puerto Rico, this 15th day of August, 2007.

7 S/José Antonio Fusté
8 JOSE ANTONIO FUSTE
9 Chief U.S. District Judge